

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
COMMONWEALTH EDISON COMPANY )  
 )  
Petition to Make Housekeeping )  
Revisions and a Compliance )  
Change To Filed Rate Formula. ) No. 14-0316

Chicago, Illinois  
November 24, 2014

Met pursuant to notice at 9:30 a.m.

BEFORE :

DOUGLAS P. SCOTT, Chairman  
JOHN T. COLGAN, Commissioner (via video)  
ANN McCABE, Commissioner  
SHERINA E. MAYE, Commissioner  
MIGUEL del VALLE, Commissioner

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1           CHAIRMAN SCOTT: Ready in Springfield,  
2 Commissioner Colgan?

3           COMMISSIONER COLGAN: Yes, Chairman. We're  
4 ready here.

5           CHAIRMAN SCOTT: Very good. Thank you.

6                       Pursuant to Section 200.850 of the  
7 Commission's Administrative Rules, I now convene oral  
8 argument before the Illinois Commerce Commission in  
9 Docket No. 14-0316. This is Commonwealth Edison  
10 Company's Petition to Make Housekeeping Revisions and  
11 a Compliance Change to their Filed Rate Formula.

12                      With me in Chicago are  
13 Commissioner McCabe, Commissioner del Valle, and  
14 Commissioner Maye. With us in Springfield is  
15 Commissioner Colgan. I'm Chairman Scott.

16                      As the Commission noticed to the  
17 parties, the scope of oral argument may encompass the  
18 following topic:

19                      Please define "formula rate structure"  
20 as it used in Section 16-108.5.

21                      Participants are directed to keep  
22 their arguments within the scope of this issue unless

1 directed by a Commissioner.

2 Oral argument in this case was noticed  
3 for today, November 24, 2014, at 9:30 a.m. and all  
4 participants should have received both the notice and  
5 a schedule for today's oral argument. As stated in  
6 our notice, in addition to the topics already  
7 identified, the parties should also be prepared to  
8 answer any questions regarding the record or  
9 pertinent law.

10 There are four parties participating  
11 in today's arguments. The parties may divide their  
12 allotted time between initial argument and rebuttal,  
13 and in ComEd's case, surrebuttal. So please let us  
14 know before you begin if you plan to reserve time.

15 In terms of the order of presentation,  
16 as indicated in the agenda, we will start with ComEd,  
17 followed by Staff of the Illinois Commerce  
18 Commission, then the Attorney General's Office, and  
19 the Citizens Utility Board. We will use the same  
20 order for rebuttal.

21 We have three timely-received exhibits  
22 from ComEd for today's oral argument.

1                   A timekeeper, Ms. Luckey, will be  
2     monitoring the time in Chicago. She is sitting on my  
3     left. So you should be cognizant of your time usage,  
4     and we will attempt to give the presenter a warning  
5     one minute before your time is expired. So if  
6     you're -- on your original argument -- whatever you  
7     say you're going to use for your original argument,  
8     you'll get the one minute before that time is  
9     completed.

10                  Again, please let both the  
11     Commissioners and timekeeper know if you are  
12     reserving any time for rebuttal or surrebuttal. To  
13     keep things on schedule, your time allotment is  
14     inclusive of Commission questions and any related  
15     answers, so please do be judicious with your time.

16                  Turning now to oral argument, first we  
17     will hear from ComEd through its attorney, Clark  
18     Stalker.

19                  Mr. Stalker, you'll have 15 minutes  
20     for your initial presentation, rebuttal, and  
21     surrebuttal. Would you like to reserve any time,  
22     sir?

1           MR. STALKER:  Yes, your Honor.  I would reserve  
2   5 minutes --

3           CHAIRMAN SCOTT:  Very good.

4           MR. STALKER:  -- for rebuttal and/or  
5   surrebuttal.

6           CHAIRMAN SCOTT:  Very good.  You can start  
7   whenever you're ready, sir.

8                           ORAL ARGUMENT

9                           BY

10                          MR. STALKER:

11                           Good morning, Mr. Chairman and  
12   Commissioners, both here in Chicago and in  
13   Springfield.

14                           It is not disputed that the formula  
15   rate law, commonly known as EIMA, prohibits changes  
16   to the formula rate structure in an annual update  
17   proceeding.  Changes to the formula rate structure  
18   are made in a Section 9-201 proceeding.  Over the  
19   past three years, however, ComEd's formula rate  
20   structure has frequently been challenged in the  
21   company's annual update proceeding.

22                           Here, the Proposed Order adopting

1     Staff and the AG's proposal loses sight of the fact  
2     that the Commission has already approved ComEd's  
3     formula as required under EIMA Section 16-108.5 and  
4     recommends that ComEd's formula rate structure be  
5     redefined simply as Summary Schedules FR A-1 and  
6     FR A-1 REC. And that's all caps, R-E-C.

7                     ComEd maintains that there is no basis  
8     to redefine its structure, and, in fact, to be  
9     compliant with EIMA, it's formula rate structure must  
10    be Schedules FR A-1, A-1 REC, and also the schedules  
11    and appendices that support FR A-1 and A-1 REC.

12                    So what is the harm if ComEd's formula  
13    rate structure is now replaced with the truncated  
14    structure adopted in the Proposed Order? First, the  
15    truncated structure is not in compliance with EIMA;  
16    second, ComEd's annual update proceedings will  
17    continue to involve out-of-scope structure issues;  
18    and, third, there will be annual uncertainty and lack  
19    of standardization and transparency in the formula  
20    and its process which violate express provisions in  
21    EIMA.

22                    Let me first clarify what ComEd is not

1     requesting here. ComEd's formula rate structure has  
2     not and will not in any way diminish the Commission's  
3     authority to scrutinize ComEd's costs and rates. The  
4     ICC, Staff, and interveners will continue to analyze  
5     ComEd's rates for prudence and reasonableness just as  
6     they have in the past and do so today as expressly  
7     called for by EIMA.

8                     Costs will continue to be challenged  
9     and adjustments made even if the Commission reaffirms  
10    ComEd's formula rate structure definition as adopted  
11    earlier. And ComEd's formula rate structure does not  
12    delay rate-making adjustments or impose burdens on  
13    Staff and interveners.

14                    So what is ComEd requesting here  
15    today? Simply for the Commission to clarify the  
16    confusion and uncertainty that has persisted for the  
17    past three years and to continue to have its formula  
18    rate structure be defined as Schedule FR A-1, A-1  
19    REC, along with the supporting schedules and  
20    appendices referenced and incorporated in its formula  
21    which comprise Exhibit 1 before you.

22                    If I could please direct your



1     attention to Exhibit 1, you'll see here that this --  
2     on the first page is an index listing all of the  
3     schedules and appendices that comprise ComEd's  
4     formula. You'll note that Schedule FR A-1 and  
5     A-1 REC are merely two of, you know, approximately 12  
6     schedules and 11 appendices.

7                     Turning your attention to Pages 2 and  
8     3, you'll see there that this is a screenshot of  
9     Schedule FR A-1 and A-1 REC. These are merely  
10    summary schedules which merely capture totals from  
11    the other schedules which follow, yet this is what  
12    the Proposed Order now finds to be ComEd's formula.

13                    You'll note in the middle there's a  
14    source column. The source column refers to ComEd's  
15    supporting schedules and appendices which show where  
16    the revenue requirement calculations came from. The  
17    formula clearly is much more than FR A-1 and A-1 REC.  
18    You can see these references to the various schedules  
19    where the data is being pulled from.

20                    This shows how fully transparent  
21    ComEd's formula is, which EIMA requires. FR A-1 and  
22    A-1 REC alone are not transparent. A-1 and A-1 REC

1 alone do not contain references to FERC Form 1 data  
2 which is the source of the formula cost inputs.

3                   The Commission's Oral Argument Notice  
4 asked the parties to define "formula rate structure"  
5 as it is used in Section 16-108.5. If I could please  
6 direct your attention to the second exhibit in which  
7 ComEd has their excerpted key relevant provisions  
8 from EIMA which bear upon the definitional issue.

9                   You'll see on the left-hand column  
10 three -- three bullet -- three paragraphs excerpted  
11 from EIMA. Under EIMA, the utility is allowed to  
12 recover its reasonably and prudently incurred  
13 expenditures through a performance-based formula rate  
14 structure designed to provide regulatory certainty  
15 for the utility.

16                   The utility's formula rate structure  
17 is not supposed to be subject to yearly attack which  
18 crates regulatory uncertainty. This is not to say  
19 the formula cannot be challenged, but doing so merely  
20 has to occur in a separate Section 9-201 proceeding.

21                   Directing your attention to the bottom  
22 of the left-hand column, the key provision there

1 states that EIMA maintains a prudence and  
2 reasonableness review, but it defines a ratemaking  
3 process that requires specificity, standardization,  
4 and transparency, which only ComEd's definition of  
5 the formula provides. This standard and transparent  
6 approach is also what's allowed for certainty in a  
7 shorter time frame for updates over traditional  
8 ratemaking.

9                   If I could briefly walk you through  
10 that right-hand column -- and I'll spare you all the  
11 detail -- but you'll see there that the  
12 performance-based formula rate approved by the  
13 Commission shall do the following, and there are six  
14 subparagraphs that follow.

15                   Each of those -- and I'm referring now  
16 to the utility's actual costs -- the actual year-end  
17 capital structure, the cost of equity, the basic  
18 certain protocols, the ROE Collar, and the annual  
19 reconciliation. No cost data or calculations found  
20 in FR A-1 or A-1 REC will support those six items  
21 standing alone. All inputs and calculations for  
22 those six structural components are found in the

1 supporting schedules to ComEd's formula.

2                   Turning your attention to Page 2 of  
3 the exhibit, EIMA requires that ComEd's formula rate  
4 structure protocol and initial rates be established  
5 in one docket. The formula structure is not to be  
6 changed going forward unless done so in a  
7 Section 9-201 case.

8                   ComEd filed its proposed formula rate  
9 structure protocols and initial rates in  
10 Docket No. 11-0721. As discussed in ComEd's briefs  
11 here, ComEd maintains that Commission Orders in  
12 11-0721 and subsequent compliance filings clearly  
13 adopted ComEd's definition of the formula, but this  
14 fact seems to have gotten lost over the past 2 years.  
15 However, in 11-0721, the Commission also adopted a  
16 position that a rulemaking should follow regarding  
17 formula structure.

18                   In ComEd's first formula rate update  
19 case, which was Docket 12-0321, the ICC again adopted  
20 the majority of ComEd's schedules, but again  
21 reassured all parties that a rulemaking was  
22 forthcoming. Unfortunately, the fact that ComEd's

1 formula has already been decided has become somewhat  
2 muddled and the rulemaking has never occurred.

3 Instead the Commission took up the formula rate  
4 structure issue in a standalone Ameren case.

5                   So why should the Commission reaffirm  
6 ComEd's formula rate structure definition? ComEd's  
7 formula structure is consistent with the statute. It  
8 provides clarity, transparency, certainty, which the  
9 Proposed Order currently does not do.

10                   EIMA repeatedly says the formula is to  
11 be populated with FERC Form 1 data, but Schedules  
12 FR A-1 and A-1 REC do not contain references to FERC  
13 Form 1. Only ComEd's other schedules and appendices  
14 cite to FERC Form 1 in source of its numbers.

15                   Ironically, but, I think, tellingly,  
16 the ICC's FRU Orders, the Formula Rate Update Orders,  
17 include and attach approximately 20 pages of similar  
18 information including rate base and expense  
19 schedules, the ROE Collar, and interest calculations  
20 that ComEd uses in its formula structure. It's the  
21 same information in the same buckets, just a slightly  
22 different format than how ComEd would present the

1 data.

2                   Indeed, following the Commission's  
3 Formula Rate Update Orders, no party has challenged  
4 ComEd's compliance filings which use ComEd's formula.  
5 So no one has had any disputes using ComEd's formula  
6 as ComEd defines it.

7                   EIMA prohibits changes to the formula  
8 unless they're made in a 9-201 proceeding. There  
9 have been several 9-201 proceedings over the past  
10 three years which have fine-tuned discrete issues  
11 with ComEd's formula structure. These have included  
12 cash working capital, ADIT on reconciliation, the ROE  
13 Collar calculation, the WACC -- W-A-C-C -- gross-up,  
14 and in this case, the depreciation calculation.  
15 There are few, if any, structural issues remaining to  
16 be challenged at this point.

17                   Adopting the Proposed Order's  
18 truncated version of ComEd's formula structure will  
19 open up the annual formula rate update to  
20 out-of-scope attacks that undermine the certainty,  
21 standardization, and transparency in the formula.  
22 The Commission should reaffirm that ComEd's formula

1     rate structure definition should be adopted here.

2                     Thank you.

3             CHAIRMAN SCOTT:   Okay.   Thank you.

4                     Any questions?

5                     I believe you're pretty close to right

6     on the time that you -- you said, so you'll have your

7     5 minutes remaining.

8             MR. STALKER:   Great.

9             CHAIRMAN SCOTT:   Thank you, Mr. Stalker.

10                    All right.   Next we'll hear from

11    Ms. Kimberly Swan representing the Staff of the

12    Illinois Commerce Commission.

13                    Ms. Swan, you'll have 10 minutes.

14    Would you like to reserve any time?

15             MS. SWAN:   Yes, Chairman.   I'd like to reserve

16    any of my remaining time for rebuttal.

17             CHAIRMAN SCOTT:   That will be fine.   Thank you.

18    Go right ahead.

19             MS. SWAN:   Thank you.

20

21

22

1 ORAL ARGUMENT

2 BY

3 MS. SWAN:

4 Good morning, Chairman and  
5 Commissioners. Kim Swan for the Staff witnesses of  
6 the Illinois Commerce Commission. The phrase  
7 "formula rate structure" as it is used in Section  
8 16-108.5 was not defined by the legislature and it is  
9 ambiguous. When a statute is ambiguous like this,  
10 the Commission enjoys great discretion in  
11 interpreting the meaning of the statute as long as  
12 that interpretation is reasonable.

13 Having said that, Staff believes that  
14 the phrase "formula rate structure" should be defined  
15 to mean the Commission approved formula rate tariff  
16 which includes only Schedules FR A-1 and FR A-1 REC.  
17 This definition is consistent with the Order in  
18 Docket 11-0721, ComEd's initial formula rate case,  
19 wherein the Commission approved only Schedules FR A-1  
20 and FR A-1 REC for the formula rate tariff. Since  
21 only the formulas -- excuse me -- formats for those  
22 schedules were approved, only changes to those two



1 schedules should require a Section 9-201 proceeding.

2                   Also in Docket 11-0721, the  
3 Commission's Order stated that other schedules,  
4 appendices, and work papers may be part of the  
5 filing, but that they were not part of the tariff.  
6 Under Article 9 of the Public Utilities Act, the  
7 Commission approves tariffs; therefore, the  
8 Commission would not approve those other supporting  
9 schedules, appendices, and work papers. This is both  
10 practical and consistent with the Commission's past  
11 practice. Importantly, EIMA requires consistency  
12 with that past practice.

13                   Despite ComEd's arguments to the  
14 contrary, the Commission has never approved the other  
15 supporting schedules and appendices as part of the  
16 formula rate structure. ComEd references as support  
17 for its position the Final Order in  
18 Docket No. 13-0318. In that Order, certain issues  
19 were not addressed because issues had already been  
20 decided in a separate proceeding, Docket No. 13-0553,  
21 not because the issues would have required changes to  
22 the schedules and appendices that necessitated a

1     9-201 proceeding as ComEd argues.

2                     ComEd implies by this argument that  
3     those schedules and appendices were considered part  
4     of the formula rate structure, but as I already  
5     mentioned, the issues were beyond the scope of that  
6     docket because they'd already been decided. The  
7     Commission never made a determination of whether it  
8     would have been appropriate to litigate those issues  
9     in the formula rate reconciliation docket or not.

10                    Staff's definition is also consistent  
11    with the Commission's actions in Docket 13-0318  
12    wherein ComEd objected to Staff's adjustment to cash  
13    working capital because ComEd claimed it would  
14    require changes to certain supporting schedules,  
15    appendices, and work papers.

16                    The Commission disagreed with ComEd  
17    and found that the cash working capital should be  
18    calculated using inputs from the year to which it  
19    applies regardless of which schedules, appendices,  
20    and work papers could be changed to make that  
21    calculation. No Section 9-201 proceeding was  
22    required for those -- for approval of those changes.

1                   Staff's definition is also consistent  
2   with the Commission's recent decision interpreting  
3   this very phrase as applicable to Ameren, the only  
4   other utility filing formula rates under EIMA in  
5   Docket Nos. 13-0501 and 13-0517. In that proceeding,  
6   the Commission held the phrase "formula rate  
7   structure" means only Schedules FR A-1 and  
8   FR A-1 REC.

9                   The Commission should interpret the  
10   same statutory language the same way for each utility  
11   and should make consistent findings among similar  
12   dockets unless there is good rationale in the record  
13   to deviate from previous decisions. There's no such  
14   rationale here.

15                  In stark contrast to Staff's proposed  
16   definition, ComEd's definition would lead to  
17   uncertain results, which may be -- which must be  
18   avoided when interpreting statutory language. Under  
19   ComEd's definition, all schedules and appendices  
20   would be part of the formula rate structure and could  
21   not be changed outside of a Section 9-201 proceeding,  
22   but the Commission has a statutory directive to

1 ensure formula rates are prudently incurred and  
2 reasonable.

3                   The Commission's ability to approve  
4 adjustments within a formula rate case would be  
5 hampered by the Company's definition since only  
6 adjustments that could be accommodated by the  
7 existing schedules could be approved. This is  
8 contrary to the Act's directive to ensure rates are  
9 prudently incurred and reasonable.

10                   Additionally, if a separate 9-201  
11 proceeding was to be opened in connection with every  
12 formula rate case every year, it would be very taxing  
13 on Staff, the other interveners, and the Commission  
14 itself. Those 9-201 proceedings would have to be  
15 finalized by November 30th in order for each of the  
16 changes to be effective for the next formula rate.  
17 But we can't identify what ComEd would characterize  
18 as formula changes until discovery is complete or  
19 even after our direct testimony is filed in the  
20 formula rate case. At that point, the Staff would be  
21 required to file an essentially duplicate docket to  
22 litigate those issues which would be burdensome,

1 unnecessary, and a waste of administrative resources.

2                   The inevitable consequences of  
3 adopting Staff's -- or, excuse me -- ComEd's proposal  
4 could not be avoided and the Commission should reject  
5 ComEd's proposal. Any interpretation of a statutory  
6 phrase that could render the related statutory  
7 directive meaningless should be avoided.

8                   ComEd also argues the Commission --  
9 urges the Commission to delay making a decision on  
10 this definition so contemplative rulemaking on this  
11 issue can be initiated and completed. In doing so,  
12 ComEd ignores two recent Commission decisions:  
13 first, that such a rulemaking no longer seems  
14 prudent; and, second, that in the Interim Order in  
15 this very proceeding, the Commission already made it  
16 clear that it would consider a definition of formula  
17 rate structure as it applies to ComEd.

18                   Now, as its name implies, the formula  
19 rate structure is a formula calculated as any  
20 mathematical formula should be. Just like any other  
21 mathematical formula, it has inputs which may change,  
22 but the formula itself does not. As defined, a

1 mathematical formula is a special type of equation  
2 that shows the relationship between different  
3 variables.

4                   Hence, the formula is set, just as  
5 Schedules FR A-1 and FR A-1 REC are set and cannot be  
6 changed without a Section 9-201 proceeding; but the  
7 inputs themselves are variable, just as the  
8 supporting schedules, appendices, and work papers are  
9 variable and that they can be modified without a  
10 Section 9-201 proceeding. This mathematical formula  
11 is what lends the utilities the certainty that  
12 they're looking for.

13                   Therefore, Staff recommends the  
14 Commission adopt's Staff's definition of formula rate  
15 structure in this proceeding, which if adopted would  
16 refer only to Schedules FR A-1 REC -- or, excuse  
17 me -- FR A-1 and FR A-1 REC.

18           CHAIRMAN SCOTT: Thank you, Ms. Swan.

19                   How much time?

20           MS. LUCKEY: 3 minutes.

21           CHAIRMAN SCOTT: 3 minutes remaining.

22           MS. SWAN: Thank you.

1           CHAIRMAN SCOTT: Very good. Thank you.

2                       Next we'll hear from Ms. Karen Lusson

3   representing the People of the State of Illinois from

4   the Attorney General's Office.

5                       Ms. Lusson, you'll have 10 minutes.

6   Would you like to reserve any time?

7           MS. LUSSON: Yes, I would. If I could, I'd

8   like to reserve 2 minutes.

9           CHAIRMAN SCOTT: Very good. Thank you. Go

10 right ahead.

11                       ORAL ARGUMENT

12                       BY

13                       MS. LUSSON:

14                       Thank you, Chairman Scott and

15   Commissioners. The issue before you today is the

16   identical issue that you just recently addressed in

17   the Ameren formula rate definition Docket 13-0501 and

18   0517. There you adopted Staff Witness Ebrey's

19   definition of the tariff as the two-page FR A-1 and

20   FR A-1 REC schedules, the very same definition that

21   Staff, as Ms. Swan just indicated, this office, the

22   AG's office, and CUB are asking you to adopt in this

1 case.

2                   There are no facts in the record that  
3 support deviating from that conclusion in the Ameren  
4 docket. There's no rationale that supports any such  
5 deviation. The statute is the same statute. The  
6 process should be the same.

7                   The problem with ComEd's position, as  
8 Ms. Swan has highlighted, is that adoption of what I  
9 call the Company's everything-but-the-kitchen-sink  
10 definition of the tariff would hamstring your ability  
11 to set just and reasonable rates in annual formula  
12 rate update proceedings.

13                   ComEd's definition, which would  
14 include all 31 pages of the FR A-1 and FR A-1 REC,  
15 and all of these supporting -- 29 supporting pages of  
16 supporting schedules would mean that every backup  
17 schedule for the tariff is unchangeable in a formula  
18 rate docket without a new Section 9-201 proceeding  
19 being filed and litigated at the same time as the  
20 annual formula rate docket.

21                   Under ComEd's definition of the  
22 tariff, if the Commission Staff or any intervener



1 wanted to challenge an existing input to the rate  
2 that's included in those supporting schedules or make  
3 a place for a new adjustment or input that's needed,  
4 they have to file a separate 9-201 proceeding under  
5 that definition. And then rate setting, to an even  
6 greater extent than it already is, becomes a battle  
7 of resources.

8 Will the Commission Staff and  
9 interveners have the resources to file a separate  
10 Section 9-201 complaint in the middle of a formula  
11 rate case? We know ComEd will and -- if they want to  
12 change a backup schedule, but not necessarily so with  
13 interveners and Staff. If the end goal is setting  
14 just and reasonable rates each year -- and I think  
15 that is the goal -- it gets a whole lot harder to  
16 achieve under ComEd's definition.

17 The facts are these: over the last  
18 two years, the Commission and interveners, as well as  
19 ComEd and Ameren, have had to file a total of eight  
20 dockets to implement new formula rates in just two  
21 years, 2014 and 2015, based on the interpretation of  
22 the tariff that ComEd hopes you'll adopt in this

1 docket.

2                   That's the case because of the  
3 uncertainty surrounding the definition of the tariff.  
4 And any change to an accompanying rate schedule  
5 proposed by a party was thought to possibly require  
6 the filing of a complaint in order to permit you, the  
7 Commission, to even consider that proposed adjustment  
8 and set formula rates for the coming year that were  
9 just and reasonable.

10                   Again, let me emphasize, it's just not  
11 the Commission and the interveners who have had to  
12 initiate these 9-201 proceedings. The companies  
13 themselves have been making these additional filings  
14 when they come upon changes in backup schedules that  
15 they believe need to be made. Ameren did it in 2013  
16 and now ComEd is here in this docket with the change  
17 on the cash working capital.

18                   And if -- well, don't -- don't let  
19 ComEd kid you here. There's nothing easy or sensible  
20 about this two-prong process. Having to draft  
21 complaints, as Ms. Swan pointed out, after you've  
22 filed direct testimony in the formula rate docket --

1     because that's the first time you're hearing that, in  
2     fact, ComEd believes it's a challenge to the rate  
3     structure -- is taxing on both human and financial  
4     resources and it's completely inefficient.

5                     Under ComEd's definition of the rate  
6     tariff, we go from a single set of direct, rebuttal,  
7     and surrebuttal testimonies in the formula rate  
8     docket to two sets of direct, rebuttal, and  
9     surrebuttal testimonies. We go from the usual one  
10    set of hearings to a parallel double set of hearings.  
11    We go from the usual four sets of briefs in a single  
12    docket to eight sets of briefs.

13                    So I'd have to conclude -- and  
14    hopefully you will, too -- that this clearly was not  
15    the intent of the General Assembly when it passed the  
16    formula rate process. EIMA, which established the  
17    formula rate frame work, the formula ratemaking  
18    process, was designed to ensure the annual recovery  
19    of the costs that the electric utilities invest in  
20    for distribution, infrastructure, transmission, and  
21    smart grid infrastructure, those incremental  
22    investments that the Act requires.

1                   The quid pro quo is that the utility  
2 gets to come each year before the Commission and ask  
3 to recover their actual costs from the prior year,  
4 their projected plan of investments in the coming  
5 year, and then a reconciliation of the prior year's  
6 revenue requirement with their actual costs. But the  
7 creation of a rigid 31-page formula rate tariff that  
8 could not be analyzed in these actual annual formula  
9 rate proceedings was never a part of that legislative  
10 bargain, contrary to what ComEd says.

11                   And in changing how ComEd recovers its  
12 costs, as Ms. Swan highlighted, the General Assembly  
13 definitely retained your ability to apply Article 9  
14 ratemaking adjustments that you've applied in every  
15 general rate case to these formula rate proposals.  
16 The statute specifically references that ability in  
17 Section 16-108.5(c), which outlines the annual  
18 formula rate process, and 16-108.5(d)(3), which  
19 outlines the annual reconciliation process.

20                   But a rigidly-defined template  
21 containing all -- again, all of these back supporting  
22 schedules for A-1 and A-1 REC constricts -- defining

1 material to include all of those restricts your  
2 ability to do just that, determine just and  
3 reasonable rates based on the Company's proposals.

4 Now, ComEd references transparency in  
5 support of its position, but the concept of  
6 transparency in the Public Utilities Act relates to  
7 the understandability of rates and the cost  
8 information that makes up the rates.

9 The backup schedules and the work  
10 papers will still be the focus if Staff Witness  
11 Ebrey's proposed definition is adopted. They're  
12 still to be examined in the formula rate proceeding  
13 under either definition of the tariff. And after  
14 three years of review and Commission approval, the  
15 accompanying schedules and work papers now have the  
16 weight of considerable Commission precedence.

17 So the number of adjustments that  
18 you've seen proposed to be made each year has  
19 diminished. But, again, the bottom line is there's  
20 no transparency about a process that requires two  
21 separate proceedings to establish a set of rates for  
22 one year.

1                   Defining the tariff as the two-page  
2   FR A-1, FR A-1 REC schedules ensure that -- ensures  
3   that Staff and interveners will have the ability to  
4   inspect ComEd's presentation of formula rate inputs  
5   in that proceeding so that unusual, unreasonable  
6   calculations can't be made to establish just and  
7   reasonable rates. But the more pages you include in  
8   a tariff, the more you create a rigid template that  
9   hamstrings that ability to set just and reasonable  
10 rates.

11                   And we can't lose the forest for the  
12 trees here. The EIMA statute was about setting a  
13 streamlined, annual rate-setting process. It was not  
14 about creating a double-tiered, two-prong process  
15 that exhausts the financial and human resources of  
16 Staff and interveners.

17                   You made the right call in the Ameren  
18 case. There's nothing in the record that suggests  
19 that this -- this decision should be any different.  
20 We urge you to adopt Staff Witness Ebrey's definition  
21 in this case.

22                   Thanks for the opportunity to address

1     you.

2             CHAIRMAN SCOTT:   Thank you, Ms. Lusson.

3                     Ms. Luckey, how much time does she

4     have?

5             MS. LUCKEY:   The 2 minutes she's reserved.

6             CHAIRMAN SCOTT:   The 2 minutes?   Okay.   Very

7     good.

8                     We'll next hear from Ms. Christie

9     Hicks representing the Citizens Utility Board.

10                    And you will also have 10 minutes.

11    Would you like to reserve any time?

12             MS. HICKS:   I'd like to reserve 2 minutes as

13    well.

14             CHAIRMAN SCOTT:   Very good.

15                     ORAL ARGUMENT

16                     BY

17                     MS. HICKS:

18                     Good morning, Chairman and

19    Commissioners.   Christie Hicks representing the

20    Citizens Utility Board.   And CUB agrees with Staff in

21    this case that the -- and with the AG that the term

22    "formula rate structure" as used in Section 16-108.5

1 to be defined as Schedules FR A-1 and FR A-1 REC.

2 The Proposed Order correctly adopts Staff's proposed  
3 definition, which is consistent with the spirit and  
4 the letter of statute as well as with the  
5 Commission's previous decisions on this issue. The  
6 Commission should adopt the Proposed Order's analysis  
7 and conclusion.

8 I'd first like to note the  
9 Commission's broad authority under the Public  
10 Utilities Act. From the findings and intent of the  
11 Act, the General Assembly made clear that the  
12 Commission should effectively and comprehensively  
13 regulate utilities. Article 9 requires that rates be  
14 just and reasonable, and the burden of proof is on  
15 the utility to establish justness and reasonableness.

16 Now, the EIMA states that the  
17 Commission's review of the formula rate shall be  
18 based on the same evidentiary standards as would be  
19 applied in a traditional 9-201 proceeding. I  
20 recognize that the Commissioners are well aware of  
21 language of the statute, but I believe it worthy of  
22 emphasis in this proceeding where ComEd, in their own



1 words, would like to review you -- would like to  
2 limit you to reviewing only the annually updated  
3 input data provided by a participating utility under  
4 the EIMA.

5 ComEd's proposed definition of formula  
6 rate structure severely limits what can be litigated  
7 in an annual formula rate proceeding and undermines  
8 the Commission's authority to do its job. ComEd's  
9 statutory interpretation arguments focus on the theme  
10 that EIMA requires a standardized and transparent  
11 formula rate structure.

12 ComEd has argued here today that their  
13 definition, which would -- could require multiple  
14 litigated proceedings every year, doesn't diminish  
15 the ICC's ability to review rates and doesn't burden  
16 Staff or interveners. ComEd is wrong.

17 As noted in CUB's reply brief and by  
18 Ms. Lusson here today, ComEd's formula rate has been  
19 the issue of at least seven ICC dockets over a  
20 17-month period, and this docket was bifurcated,  
21 essentially creating the workload of an eighth  
22 docket. Only two of those dockets were the

1     statutorily-mandated annual update proceedings.  It's  
2     simply absurd to argue that we should continue on  
3     like this or that this is what the General Assembly  
4     intended in passing the formula rate law.

5                     ComEd is not the only public utility  
6     with rate cases pending and CUB participates as much  
7     as possible to protect the interests of consumers,  
8     but something has to give.  I expect that ComEd, with  
9     five lawyers on this case alone, is less concerned  
10    about preservation of resources; but neither CUB nor  
11    the Commission has the ability to simply hire more  
12    help at someone else's expense should, in the next  
13    year and a half, ComEd have eight or nine or ten  
14    litigated proceedings.

15                    Surely the General Assembly, in  
16    passing EIMA, did not intend to subvert the  
17    Commission's authority and ability to review rates  
18    for justness and reasonableness simply because a  
19    utility's superior resources wore down the ability of  
20    the Commission or its Staff or interveners to  
21    meaningfully participate in all of these cases.

22                    The Proposed Order notes that the only

1     apparent reason for requiring two separate dockets  
2     with two separate time lines is a year-long delay in  
3     implementing reasonable changes. There is another  
4     consequence as well, and that is Commission resources  
5     and Staff and intervenor resources are stretched  
6     possibly to the breaking point.

7                     ComEd is correct that a formula rate  
8     must include sufficient specificity to operate in a  
9     standardized manner and updated in a transparent  
10    process. It's simply illogical to argue that  
11    multiple dockets each year to approve the same set of  
12    rates is the most standardized or the most  
13    transparent approach.

14                    The fact that the parties have agreed  
15    to expedite the schedules in some cases so that the  
16    decisions line up for the Commission's benefit this  
17    year is no guarantee that such agreements will be  
18    reached in the future. And indeed to expedite  
19    schedules and to require these dockets to move at an  
20    even quicker pace every year puts -- imposes an even  
21    greater burden on the Commission and its Staff and  
22    intervenors.

1                   The Commission and Staff and  
2     interveners already litigate a nine-month proceeding  
3     every year for each participating utility under EIMA.  
4     To protect non-utility parties' abilities to  
5     meaningfully participate in the formula ratemaking  
6     process, the Commission must limit the issues that  
7     require separate proceedings to those actually  
8     delineated by the Act. Staff's definition achieves  
9     that goal.

10                   Thank you.

11                   CHAIRMAN SCOTT: Questions?

12                   Thank you, Ms. Hicks.

13                   MS. LUCKEY: She'll have 5 minutes.

14                   CHAIRMAN SCOTT: Okay. So now we'll go to  
15     rebuttal. Mr. Stalker, you've got 5 minutes between  
16     this and surrebuttal if you...

17                   COMMISSIONER McCABE: Can I ask a question?

18                   CHAIRMAN SCOTT: Yes. You have a question.

19                   COMMISSIONER McCABE: Mr. Stalker --

20                   MR. STALKER: Yes.

21                   COMMISSIONER McCABE: -- I'm just trying to --

22     EIMA was supposed to, as people have referenced,

1     simplify and standardize the recovery of the EMI  
2     investment.  So in your -- in rebuttal, if you'd help  
3     address how that reconciles with some of the  
4     statements by the other parties today and in their  
5     briefs -- I'm just trying to get my head around that  
6     myself, so --

7             MR. STALKER:  Great.  Thank you.

8             COMMISSIONER MAYE:  Can I add something?  I'm  
9     not sure if you already addressed this, but I'm sure  
10    that you probably will; but in the event that you  
11    won't, I'd like you to address some of the  
12    allegations of the preservation or wasting of  
13    judicial resources and that type of thing.

14            MR. STALKER:  I will.  Thank you.

15            COMMISSIONER MAYE:  Thank you.

16                            REBUTTAL

17                            BY

18                            MR. STALKER:

19                            Maybe I'll start with your question  
20    first, Commissioner Maye.  ComEd is not doing  
21    anything to its formula that would diminish  
22    Commission authority, Staff or intervener ability to

1 challenge the reasonableness, the prudence of its  
2 costs. You do a very effective job today challenging  
3 on an annual basis all of the cost inputs that come  
4 from these supporting schedules, and that's where I  
5 think we're -- we're somewhat talking past one  
6 another.

7                   Everything that appears in these  
8 various supporting schedules which provide the data  
9 to the two summary schedules -- the two summary  
10 schedules standing alone are an empty shell. They  
11 collect the input from the supporting schedules. And  
12 there's nothing that requires -- in the Act that  
13 requires the tariff itself to contain all 30 pages.

14                   It says here the performance-based  
15 formula rate shall be implemented through a tariff  
16 filed with the Commission consistent with the  
17 provisions of the section. So, again, as it stands  
18 there today, the inputs and calculations will be  
19 and -- and -- have been and will be scrutinized  
20 carefully, and you do a very effective job of that.

21                   Commissioner McCabe, I think -- if I  
22 can address your question, the -- sort of the

1     bargain, so to speak, that was part of EIMA was that  
2     in exchange for the sizable investment in modernizing  
3     the infrastructure, including the smart grid and the  
4     smart meter implementation, et cetera, that the quid  
5     pro quo was a -- that the utility would get a  
6     formula-based structure that would be transparent,  
7     that would be certain, provide regulatory certainty,  
8     that would be standardized, that wouldn't lead to  
9     sort of a yearly, more traditional rate case  
10    proceeding with challenges to the structure and --  
11    which truly is inefficient. ComEd has no interest in  
12    expending excess hours and dollars in -- in extra  
13    proceedings.

14                   And I think -- as I tried to make the  
15    point in my opening comments -- the 9-201 proceedings  
16    that have occurred, which addressed four or five  
17    significant components of the formula, have been  
18    effective in fine-tuning the formula. I honestly  
19    don't know as I sit here that there are many more of  
20    these sort of significant cost component issues -- I  
21    mean, formula structure issues that still need to be  
22    sort of litigated, but, you know, we'll see.

1                   If I -- if I could just briefly direct  
2   your attention to my Exhibit 3, which essentially  
3   tries to depict what this whole dispute is about,  
4   what we have here is essentially a blueprint. And  
5   what the current Proposed Order and my opponents'  
6   view is, is that that top page to the blueprint is  
7   all that is necessary. If you want to build a house,  
8   you just need to look at this top page and you'll see  
9   that house there and you should be able to build it.

10                  What we're saying is that on Page 2,  
11   not quite. It takes the expense calculations, rate  
12   base calculations, cost of capital and -- along with  
13   other summary schedules together which provide the  
14   necessary foundation to build the house.

15                  If I could just pretend this is a  
16   Power Point and have you page through Pages 3, 4, and  
17   5, you'll see that the house is being built with  
18   different quadrants. The rate base calculation  
19   consists of two schedules and six appendices; expense  
20   calculation, four schedules and three appendices;  
21   cost of capital includes two schedules.

22                  And then on Page 6, you have other



1 summary schedules, leading to the fact that ComEd's  
2 formula rate structure consists of those two summary  
3 schedules plus the four quadrants that flow into it.

4 On Page 8, what you see here is that  
5 under today's Proposed Order, you barely -- you only  
6 have a roof. You don't have any of the essential  
7 foundational data, specificity, and transparency that  
8 ComEd needs in its -- or that ComEd has in its  
9 supporting schedules and appendices.

10 And if I -- in final seconds here, I'd  
11 just say that the Ameren decision, because there is  
12 no res judicata here, does not bound ComEd in any  
13 way, and ComEd has to be assessed on its own record  
14 and its own facts and legal issues.

15 CHAIRMAN SCOTT: That's true, but, I mean, it's  
16 the same statute. I mean, we're talking about a  
17 statutory interpretation here. I mean, I realize  
18 what the language in the Ameren case said; but  
19 essentially we're interpreting the same statute that  
20 always applied to the two companies once they opted  
21 into it. So why -- why would --

22 MR. STALKER: Yeah, that's true --

1           CHAIRMAN SCOTT:  What facts do we have here  
2   that would make it different than what we decided in  
3   the Ameren case?

4           MR. STALKER:  Well, I mean, I think ComEd just  
5   has a different factual record here.  Which I agree  
6   that the statute is the statute, but if you apply it  
7   to ComEd's record versus Ameren's, you know, I think  
8   you can reach a different conclusion.

9           CHAIRMAN SCOTT:  Let me -- let me just follow  
10  up -- I know we're running out of time, but let me  
11  just follow up on the question from Commissioner  
12  McCabe because it's the one that's been bothering me,  
13  too, and maybe you can clarify it.

14                       When EIMA was -- was initiated and  
15  passed, the justification for it was having things  
16  happen in more real time to eliminate lag.  If we  
17  stick with having to do the two proceedings,  
18  including some that you may initiate and have  
19  initiated in the past, that can delay things out far  
20  beyond what would happen through the annual case.

21                       So doesn't that seem to go against  
22  what -- what you and the others who were proponents

1 of EIMA were arguing for in the first place?

2 MR. STALKER: Yeah, valid concern,  
3 Mr. Chairman. The two proceedings that the statute  
4 calls for -- this isn't ComEd's idea. The statute  
5 says, you know, if you're going to challenge the  
6 utility's formula, do so in a 9-201 proceeding.

7 That proceeding does not have to be  
8 the parade of horrors, the inefficient process  
9 that -- that is being expressed here today. This  
10 current proceeding, why we're here today, is a 9-201  
11 proceeding, and we've been able to get it done  
12 efficiently in six months. So that would be, I  
13 think, a fair assessment on what we can expect these  
14 sort of proceedings to involve. So to your concern,  
15 I don't see it ever spilling beyond the statutory  
16 nine-month deadline of a formula rate update  
17 proceeding.

18 Again, and I've said this now a few  
19 times, I'd like to think that we've now identified  
20 over the past two years, the key structural issues  
21 that have been challenged and modified: you know, the  
22 ADIT, cash working capital, WACC gross-up. So, for

1     lack of a better term, the bigger ticket items have  
2     been honed in and on and, I would say, you know,  
3     fixed and modified and the Company has made  
4     adjustments.

5                     And I think the fact that we've had  
6     subsequent Formula Rate Update Orders and compliance  
7     filings that have not been challenged that have  
8     incorporated ComEd's formula structure and its  
9     schedules and appendices suggests everyone's okay  
10    with it on both sides.

11                    CHAIRMAN SCOTT: Thank you. Appreciate it.

12                    Ms. Swan, you've got 3 minutes.

13                    MS. SWAN: Thank you.

14                    REBUTTAL

15                    BY

16                    MS. SWAN:

17                    Mr. Stalker stated that nothing is  
18    required -- requires a tariff to contain all 30 pages  
19    of the formula rate structure; but this contradicts  
20    his statement that ComEd's interpretation does not  
21    undermine the Commission's authority.

22                    As the PO pointed out, the Commission

1     only approved the structure and format of Schedules  
2     FR A-1 and FR A-1 REC. But under ComEd's  
3     interpretation, the Commission will be bound by the  
4     other schedules, appendices, and work papers, which  
5     were never approved.

6                     Second, Mr. Stalker touched on his  
7     analogy of a blueprint with the formula rate  
8     structure. Now, I don't pretend to have any  
9     architectural expertise and I don't think I really  
10    need it. I don't think you do either. ComEd opted  
11    to commit to certain EIMA requirements in exchange  
12    for a formula rate, not an architectural blueprint.  
13    And as I already touched on in my direct, this is  
14    more of a mathematical formula. It's not a  
15    blueprint.

16                    And, finally, to your question,  
17    Chairman Scott, I don't think that these extended  
18    dockets which can cause updates to be delayed almost  
19    up to two years is consistent with the rationale of  
20    the EIMA statute.

21                    As the PO states, the -- it could take  
22    almost two years from the time issues are discovered

1 in a formula rate update docket until they're  
2 actually reflected in rates under ComEd's  
3 interpretation of a formula rate structure. I think  
4 that should be avoided.

5 CHAIRMAN SCOTT: Is there -- is there any  
6 reason -- going by what Mr. Stalker says -- in your  
7 opinion, any reason to believe that because some of  
8 the larger issues are out of the way and this one was  
9 able to be expedited to line up with the proceeding  
10 that that couldn't happen in the -- in the future?

11 MS. SWAN: I think until this -- up until now,  
12 the parties have been -- have made a concerted effort  
13 to align the two schedules; but there's nothing that  
14 requires the parties to agree to those hastened  
15 schedules. And the parties could very well refuse to  
16 do so, causing us to have this issue with the timing  
17 just because -- but the 9-201 statute and the EIMA  
18 statute have different time requirements, time frames  
19 that don't coincide with each other.

20 CHAIRMAN SCOTT: Any other questions?

21 Okay. Thank you, Ms. Swan.

22 MS. SWAN: Thank you.

1 CHAIRMAN SCOTT: Ms. Lusson, 2 minutes.

2 MS. LUSSON: Thank you.

3 REBUTTAL

4 BY

5 MS. LUSSON:

6 As we all know, Section 16-108.5(c)  
7 has been open to various interpretations that have  
8 ended up in the courts, back before the General  
9 Assembly, but with -- but the words that ComEd is  
10 asking you to focus on are the words "structure" or  
11 "protocols" and they're really not defined otherwise  
12 in the statute, and so this is absolutely within your  
13 discretion. You used that discretion in the Ameren  
14 case. And, again, the facts just don't -- in this  
15 case, don't change or point to a different result.

16 I would note, too, that -- earlier  
17 Mr. Streicher (sic) indicated that you've already  
18 established a tariff for the formula rate structure  
19 that is larger than the A-1 Schedule and the A-1 REC  
20 Schedule, and I would disagree with that. There's  
21 nothing in the 11-0721 Order that points to that.  
22 And, in fact, the Company's own publicly filed tariff

1 at Pages 417 through 437 only include the A-1 and  
2 A-1 REC schedules.

3 And, finally, about the blueprint  
4 analogy, I don't think that's an apt analogy, nor did  
5 Ms. Ebrey. And she, I think, addressed it very well  
6 in her rebuttal testimony. She testified -- I think  
7 she reminds the Commission that a blueprint is  
8 certainly first approved; but as the construction  
9 process goes along, the -- the support for the  
10 blueprint and the many pages associated with the  
11 blueprint require adjustments. Maybe the window is  
12 3 inches off to the left or the door opening is too  
13 small or whatever.

14 I would suggest that every time those  
15 inaccuracies or problems are identified, the  
16 homeowner does not run back to the Zoning Board of  
17 Appeals to get that change made. They propose it to  
18 the contractor and the change is made and then  
19 ultimately approved by the building inspector. And  
20 ComEd's -- under ComEd's analysis, that homeowner  
21 would have to run back to the Zoning Board each time  
22 to get a new blueprint approved. So, again, we would



1 reject that analogy.

2 Again, nothing in the evidence  
3 supports deviating from your original conclusion in  
4 the Ameren docket. And we, again, support  
5 Ms. Ebrey's proposed A-1 and A-1 REC definition.

6 Thank you.

7 CHAIRMAN SCOTT: Thank you, Ms. Lusson.

8 Ms. Hicks, you have 5 minutes left, I  
9 believe.

10 REBUTTAL

11 BY

12 MS. HICKS:

13 I would just like to touch on  
14 Mr. Stalker's response to Chairman's Scott's question  
15 where Mr. Stalker stated that even having these  
16 multiple dockets every year, that he doesn't  
17 anticipate in the future that it's likely to spill  
18 over the nine-month process, and after all, we were  
19 able to get this docket done in six months. But I  
20 question whether that's really a good thing. Is it  
21 really good for the Commission, is it really good for  
22 ratepayers, is it even really good for the utilities

1 to try to condense these important decisions now and  
2 make them happen as quickly as possible?

3 What if an issue came up in an annual  
4 formula rate update that we didn't discover until  
5 several months into the process? Then are we going  
6 to try to expedite that decision and have you make a  
7 decision on three months' notice or two months'  
8 notice? It simply doesn't make sense, and it simply  
9 doesn't jive with the EIMA's supposedly streamlined  
10 process.

11 That's all I have. Thank you.

12 CHAIRMAN SCOTT: Okay. Thank you very much.

13 Thank you, everyone, for your  
14 preparation and for your argument today. And we're  
15 adjourned. Thank you.

16 (Whereupon, the above matter  
17 was adjourned.)

18

19

20

21

22